

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

FedNat Insurance Company,)	Case No. 9:21-cv-01602-RMG
)	
Plaintiff,)	
)	
vs.)	
)	
Jenifer Gajdalo and Elizabeth Kulka,)	
)	
Defendants.)	THIRD-PARTY DEFENDANTS' ANSWER TO THIRD-PARTY PLAINTIFF'S THIRD-PARTY COMPLAINT
)	
Elizabeth Kulka)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
Belmont Insurance Services, LLC, and)	
Kathy Kinard,)	
)	
Third-Party Defendants.)	
)	
)	

Third-Party Defendants, Belmont Insurance Services, LLC and Kathy Kinard, (hereafter “Third-Party Defendants”), by and through their undersigned counsel, submit this Answer to the Third-Party Complaint, and state as follows.

FOR A FIRST DEFENSE

1. Third-Party Defendants deny each and every allegation of the Third-Party Complaint not hereinafter specifically admitted.
2. The allegations of Paragraph 102 of the Third-Party Complaint do not require a response.

3. Third-Party Defendants admit, upon information and belief, the allegations of Paragraph 103 of the Third-Party Complaint.

4. Third-Party Defendants admit the allegations of Paragraph 104 of the Third-Party Complaint.

5. As to the allegations of Paragraph 105 of the Third-Party Complaint, Third-Party Defendants admit only that Third-Party Defendant Kinard is a licensed insurance agent and deny all remaining allegations.

6. Third-Party Defendants deny the allegations of Paragraph 106 of the Third-Party Complaint.

7. The allegations of Paragraph 107 of the Third-Party Complaint do not require a response.

AS TO FACTUAL ALLEGATIONS

8. Responding to Paragraph 108 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

9. As to the allegations of Paragraphs 109 and 110 of the Third-Party Complaint, Third-Party Defendants lack sufficient information as to the allegations and therefore deny the same and demand strict proof thereof.

10. As to the allegations of Paragraph 111 of the Third-Party Complaint, Third-Party Defendants admit only that which is specifically set forth in the referenced policy and deny any allegations not specifically set forth therein.

11. As to the allegations of Paragraph 112 of the Third-Party Complaint, Third-Party Defendants lack sufficient information as to the allegations and therefore deny the same and demand strict proof thereof.

12. Third-Party Defendants admit, upon information and belief, the allegations of Paragraphs 113, 114 and 115 of the Third-Party Complaint.

13. As to the allegations of Paragraph 116 of the Third-Party Complaint, Third-Party Defendants admit only that which is specifically set forth in the referenced lawsuit and deny any allegations not strictly in conformance therewith.

AS TO THIRD-PARTY PLAINTIFF'S FIRST CAUSE OF ACTION
(Bad Faith)

14. Responding to Paragraph 117 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

15. Third-Party Defendants deny the allegations of Paragraphs 118, 119, 120 and 121 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S SECOND CAUSE OF ACTION
(Breach of Contract)

16. Responding to Paragraph 122 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

17. As to the allegations of Paragraph 123 of the Third-Party Complaint, Third-Party Defendants admit only that a policy was sold, and as to the remaining allegations, these Defendants lack sufficient information as to the allegations and therefore deny the same and demand strict proof thereof.

18. Third-Party Defendants deny the allegations of Paragraphs 124, 125, 126 and 127 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S THIRD CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)

19. Responding to Paragraph 128 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

20. Third-Party Defendants deny the allegations of Paragraphs 129, 130, 131 and 132 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S FOURTH CAUSE OF ACTION
(Improper Claims Practices)

21. Responding to Paragraph 133 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

22. Third-Party Defendants deny the allegations of Paragraphs 134, 135, 136, 137 and 138, and all sub-parts thereto, of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

23. Responding to Paragraph 139 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

24. Third-Party Defendants deny the allegations of Paragraphs 140, 141, 142, 143, 144 and 145 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S SIXTH CAUSE OF ACTION
(Negligence)

25. Responding to Paragraph 146 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

26. Third-Party Defendants deny the allegations of Paragraphs 147, 148, 149, 150 and 151 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

27. Responding to Paragraph 152 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

28. Third-Party Defendants deny the allegations of Paragraphs 153, 154, 155 and 156 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Fraud)

29. Responding to Paragraph 157 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

30. Third-Party Defendants deny the allegations of Paragraphs 158, 159, 160, 161, 162 and 163 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S NINTH CAUSE OF ACTION
(Conversion)

31. Responding to Paragraph 164 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

32. Third-Party Defendants deny the allegations of Paragraphs 165, 166, 167, 168 and 169 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S TENTH CAUSE OF ACTION
(Breach of Fiduciary Duties)

33. Responding to Paragraph 170 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

34. Third-Party Defendants deny the allegations of Paragraphs 171 and 172 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

35. Responding to Paragraph 173 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

36. Third-Party Defendants deny the allegations of Paragraphs 174 and 175 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S TWELFTH CAUSE OF ACTION
(Civil Conspiracy)

37. Responding to Paragraph 176 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

38. Third-Party Defendants deny the allegations of Paragraphs 177, 178 and 179 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S THIRTEENTH CAUSE OF ACTION
(Outrage)

39. Responding to Paragraph 180 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

40. Third-Party Defendants deny the allegations of Paragraphs 181, 182 and 183 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S FOURTEENTH CAUSE OF ACTION
(Money Had and Received)

41. Responding to Paragraph 184 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

42. Third-Party Defendants deny the allegations of Paragraphs 185, 186, 187 and 188 of the Third-Party Complaint.

AS TO THIRD-PARTY PLAINTIFF'S FIFTEENTH CAUSE OF ACTION
(Unjust Enrichment)

43. Responding to Paragraph 189 of the Third-Party Complaint, Third-Party Defendants repeat and re-allege as if set forth verbatim herein, the responses set forth above.

44. As to the allegations of Paragraph 190, the same states a legal conclusion that requires no response, if a response is required, the allegations are denied.

45. Third-Party Defendants deny the allegations of Paragraphs 191, 192 and 193 of the Third-Party Complaint.

46. Defendant denies in its entirety the WHEREFORE Paragraph, and all subparagraphs thereto, of the Third-Party Complaint as they may refer or implicate Third-Party Defendants.

FOR A SECOND DEFENSE
(12(b)(6) – Failure to State a Claim)

47. Further answering the Third-Party Complaint, and as and for a further defense thereto, the Third-Party Complaint fails to state claims upon which relief can be granted as to Third-Party Defendants and, therefore, dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is warranted.

FOR A THIRD DEFENSE
(Failure to Mitigate)

48. Further answering the Third-Party Complaint, and as and for a further defense thereto, upon information and belief, Third-Party Plaintiff has failed to mitigate her damages, which are expressly denied, and Third-Party Plaintiff's failure to do so constitutes a bar and/or limitation of Third-Party's Plaintiff's ability to recover against Third-Party Defendant.

FOR A FOURTH DEFENSE
(Comparative Negligence)

49. Further answering the Third-Party Complaint, and as and for a further defense thereto, Third-Party Defendants would allege and show that even if Third-Party Defendants were negligent in any respect, which is specifically denied, Third-Party Plaintiff was comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Third-Party

Defendants, which is denied, and which fault proximately caused Third-Party Plaintiff's alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence.

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

50. Further answering the Third-Party Complaint, and as and for a further defense thereto, Third-Party Defendants allege that Third-Party Plaintiff is estopped from asserting the claims for the recovery sought herein and Third-Party Plaintiff has waived any claims against Third-Party Defendants by and through her conduct so as to bar recovery.

FOR A SIXTH DEFENSE
(Statute of Limitations/Laches)

51. Further answering the Third-Party Complaint, and as and for a further defense thereto, Third-Party Plaintiff's claims against Third-Party Defendants are barred by the applicable statute of limitations and/or laches.

FOR A SEVENTH DEFENSE
(Acts of Third Parties Over Whom Defendants Have No Control)

52. Further answering the Third-Party Complaint, and as and for a further defense thereto, Third-Party Plaintiff's alleged damages, if any, which are denied, were the result of the acts of third parties over whom Third-Party Defendants had no control and, therefore, Third-Party Plaintiff cannot recover against Third-Party Defendants.

FOR AN EIGHTH DEFENSE
(Assumption of the Risk)

53. Further answering the Third-Party Complaint and as and for a further defense thereto, Third-Party Plaintiff assumed the risk by and through her conduct and thus is barred from recovery as to Third-Party Defendants.

FOR A NINTH DEFENSE
(Non-Waiver of Additional Defenses)

54. Further answering the Third-Party Complaint, and as and for a further defense thereto, Third-Party Defendants specifically reserve the right to add additional affirmative defenses as may be available or revealed during investigation or discovery in the case, as is consistent with the Federal Rules of Civil Procedure.

FOR A TENTH DEFENSE
(Punitive Damages Unconstitutional – Procedural Due Process)

55. To the extent that Third-Party Plaintiff seeks punitive or exemplary damages, which claims are denied, such claims violate the right of Third-Party Defendants to procedural due process under the Fifth and Fourteenth Amendment of the United States Constitution.

FOR AN ELEVENTH DEFENSE
(Punitive Damages Limited)

56. Any claim for punitive damages must comply with the requirements of S.C. Code Ann. §§ 15-32-510, 15-32-520 and 15-32-530, and Third-Party Defendants expressly plead those statutory sections as a defense, including but not limited to the defenses that Third-Party Plaintiff must specifically allege a claim for punitive damages as set forth in § 15-32-510, trial must be bifurcated as set forth in § 15-32-520, and any punitive damage award is subject to the limitations and caps set forth in § 15-32-530.

WHEREFORE, having fully responded to the Third-Party Complaint, Third-Party Defendants pray that the same be dismissed and the relief demanded by Third-Party Plaintiff be denied; that costs and fees be awarded to Third-Party Defendants; and for such other and further relief as this Court deems just and proper.

s/ Susan Taylor Wall

Susan Taylor Wall (Fed. ID No. 4502)

Email: swall@grsm.com

Henry W. Frampton, IV (Fed. ID 10365)

Email: hframpton@grsm.com

GORDON & REES LLP

40 Calhoun Street, Suite 350

Charleston, SC 29401

Telephone: (843) 714-2506

ATTORNEYS FOR THIRD-PARTY DEFENDANTS

Belmont Insurance Services, LLC and

Kathy Kinard

September 13, 2021

Charleston, South Carolina